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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 NORTH SEATTLE HEALTH CENTER
10 CORPORATION,

11 Plaintiff,

12 v.

13 ALLSTATE FIRE & CASUALTY
INSURANCE COMPANY,

14 Defendant.

15 ALLSTATE INDEMNITY COMPANY, et
16 al.,

17 Third-Party Plaintiffs,

18 v.

19 DAEHYUN CHOI, et al.,

20 Third-Party Defendants.
21
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CASE NO. C14-1680JLR

ORDER REGARDING MOTION
FOR CONTEMPT

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I. INTRODUCTION

Before the court is Defendant Allstate Fire and Casualty Insurance Company and Third-Party Plaintiffs Allstate Indemnity Company, Allstate Insurance Company, and Allstate Property and Casualty Insurance Company's (collectively, "Allstate") motion for contempt against Third-Party Defendants Daehyun Choi and Hyun Joo Kwan (Contempt Mot. (Dkt. # 66)) and the court's order to show cause why the court should not hold Mr. Choi and Ms. Kwan in contempt for failure to appear at their October 3, 2016, depositions (OSC (Dkt. # 72)). Neither Mr. Choi nor Ms. Kwan responded to Allstate's motion or to the court's order to show cause. (*See generally* Dkt.) The court held a hearing on Allstate's motion and the court's order to show cause on May 18, 2017, at 3:00 p.m. (Min. Entry (Dkt. # 85).) Allstate appeared through counsel. (*Id.*) Ms. Kwan appeared *pro se* at the hearing. (*Id.*) Mr. Choi failed to appear. (*See id.*) The court has considered Allstate's motion, the relevant portions of the record, and the applicable law. Being fully advised, the court GRANTS in part and DENIES in part Allstate's motion, FINDS Mr. Choi to be in civil contempt of court, ISSUES a bench warrant for Mr. Choi's arrest as described herein, AWARDS Allstate its attorney's fees and costs as described herein, and ORDERS Ms. Kwan to appear for her supplemental proceedings deposition on May 19, 2017, at 10:00 a.m.

II. BACKGROUND

On October 4, 2014, Plaintiff North Seattle Health Center Corporation ("Health Center") filed a complaint in state court against Allstate alleging claims for tortious interference with a contractual and business relationship and tortious interference with a

1 business expectancy. (*See* Compl. (Dkt. # 1-1) at 1.) On October 31, 2014, Allstate
2 removed the lawsuit from Snohomish County Superior Court to this court. (Not. of Rem.
3 (Dkt. # 1).) Allstate answered the complaint and included counterclaims for violation of
4 Washington’s Consumer Protection Act (“CPA”), RCW ch. 19.86, common law civil
5 fraud, violation of Washington’s Criminal Profiteering Act, RCW ch. 9A.82, unjust
6 enrichment, and piercing the corporate veil. (Ans. (Dkt. # 3-1) ¶¶ 7.1-10.8.) Allstate also
7 brought third-party claims against Mr. Choi, Ms. Kwan, DRDC Corporation, Inc.,
8 Bestway Chiropractic Clinic Corporation (“Bestway”), and Good Care Spine Clinic
9 Corporation (“Good Care”) (collectively, “Third-Party Defendants”) for violation of the
10 corporate practice of medicine doctrine, violation of the Professional Services
11 Corporation Act, RCW ch. 18.100, violation of Washington’s Anti-Rebate Statute, RCW
12 ch. 19.68, violation of the CPA, common law civil fraud, violation of Washington’s
13 Criminal Profiteering Act, unjust enrichment, and piercing the corporate veil.¹ (*Id.*
14 ¶¶ 11.1-22.8.)

15 On August 25 and 27, 2015, Allstate moved for the entry of default against the
16 Health Clinic and Third-Party Defendants as a sanction for discovery violations and
17 failure to abide by the court’s prior orders. (*See* Mot. for Default (Dkt. # 34); Supp. Mot.
18 for Default (Dkt. # 36).) On September 17, 2015, the court held a hearing on Allstate’s
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20 ¹ During the course of the court’s May 18, 2018 contempt hearing, Ms. Kwan asserted
21 that she was unaware that Allstate had brought any claims against her personally in this lawsuit.
22 Ms. Kwan, however, appeared in this suit through counsel on December 11, 2014 (Not. of App.
(Dkt. # 12)), and her counsel filed an answer to Allstate’s third-party claims against her on
January 15, 2015 (Ans. to CCs and 3rd Party Claims (Dkt. # 14)).

1 motions for sanctions and the entry of default, which was based on the Health Clinic's
2 and Third-Party Defendants' failure to obtain counsel as the court ordered and to respond
3 to Allstate's discovery requests. (*See* 9/17/15 Min. Entry (Dkt. # 38).) Neither the
4 Health Clinic nor Third-Party Defendants responded to Allstate's motions or appeared at
5 the September 17, 2015, hearing. (*See id.*; *see generally* Dkt.) At the hearing, the court
6 granted Allstate's motions, dismissed the Health Clinic's claims, and found Plaintiff and
7 Third-Party Defendants in default. (9/17/15 Min. Entry.)

8 On December 2, 2015, Allstate filed a motion for default judgment. (Mot. for DJ
9 (Dkt # 41).) The court denied Allstate's motion on January 27, 2016, without prejudice
10 to re-filing an amended motion. (1/27/16 Order (Dkt. # 46).) Allstate filed an amended
11 motion for default judgment on February 16, 2016 (Am. Mot. for DJ (Dkt. # 49)), and the
12 court granted Allstate's amended motion on April 26, 2016 (DJ Order (Dkt. # 64)). The
13 court formally entered judgment the next day dismissing the Health Clinic's claims with
14 prejudice and granting default judgment to Allstate in the amount of \$374,147.96. (Judg.
15 (Dkt. # 65).)

16 Allstate sent subpoenas to Mr. Choi and Ms. Kwan for supplemental proceeding
17 depositions, which Allstate noted for October 3, 2016. (Goltermann Decl. (Dkt. # 67)
18 ¶¶ 3-4, Exs. B, C; *see also* Leid Decl. (Dkt. # 83) ¶¶ 3-6, Exs. A-D.) Allstate hoped to
19 obtain information from Mr. Choi and Ms. Kwan that would enable Allstate to collection
20 upon and satisfy the default judgment it had obtained. (Contempt Mot. at 6.) Both Mr.
21 Choi and Ms. Kwan failed to appear at their October 3, 2016, depositions and gave no
22 explanation for their absence. (*See* Golterman Decl. ¶¶ 5-6, Exs. D, E; Leid Decl. ¶¶ 7-8,

1 Exs. E, F; *see also* PI Mot. (Dkt. # 69) at 3-4 (“To date [March 6, 2017], Allstate has
2 received no communications from either Daehyun Choi or Hyun Joo Kwan regarding
3 their missed debtor depositions or attempting to reschedule for a later date.”).)

4 Allstate asserts that after instituting claims against the Health Center and Third-
5 Party Defendants, Mr. Choi and Ms. Kwan opened two new clinics—Appletree
6 Acupuncture Clinic (“Appletree”) and Green Day Clinic (“Green Day”)—“under the
7 overarching umbrella” of the Health Center. (PI Mot. at 4.) Allstate argues that Mr. Choi
8 and Ms. Kwan opened the new clinics to “shield assets from any judgments that might
9 stem from Allstate’s suit.” (*Id.*)

10 In support of this assertion, Allstate submits copies of the articles of incorporation
11 for both Appletree and Green Day. (2d Goltermann Decl. (Dkt. # 70) ¶¶ 7-8, Exs. F, G.)
12 Appletree’s articles of incorporation indicate that Appletree was incorporated by “Dae
13 Hyun Choi,” who is also serving as Appletree’s registered agent at 4629 168th SW C4,
14 Lynnwood, Washington. (*Id.* ¶ 8, Ex. G at 3.) The name “Dae Hyun Choi” is
15 remarkably similar to Third-Party Defendant Daehyun Choi. Further, Mr. Choi’s address
16 on the court docket is listed as 4629 168th St. SW, STE B, Lynnwood, Washington. (*See*
17 Dkt.) Although the suite numbers are distinct, the remainder of the address for Mr. Choi,
18 as Appletree’s registered agent, corresponds to the address for Mr. Choi on the court’s
19 docket. (*Compare* 2d Goltermann Decl. Ex. G, *with* Dkt.)

20 The articles of incorporation for Green Day indicate that Green Day was
21 incorporated by “Sung Jun Jung.” (2d Goltermann Decl. ¶ 7, Ex. F at 3.) Allstate
22 provides no explanation or evidence concerning the relationship, if any, between Sung

1 Jun Jung and the Health Clinic or Third-Party Defendants. However, the address listed
2 for Sung Jun Jung on Green Day's articles of incorporation is nearly identical to the
3 address provided for the Health Center and Third-Party Defendants on the court's
4 docket.² (*Compare id.*, with Dkt.)

5 Finally, Allstate asserts that it "recently received information suggesting that [M]r.
6 Choi and [Ms.] Kwan are in the process of selling their businesses and moving back to
7 South Korea, likely to escape the payment of the Court ordered judgment to Allstate."
8 (PI Mot. at 4.) Allstate, however, submits no evidence to support this assertion.³ (*See*
9 *generally* Dkt.)

10 On December 28, 2016, Allstate filed a motion for contempt against Mr. Choi and
11 Ms. Kwan for their failure to appear at their debtors' depositions. (*See* Contempt Mot.)
12 Allstate asked the court to award its reasonable attorneys' fees and costs in bringing the
13 motion for contempt and the court reporter fees for the depositions at which Mr. Choi and
14 Ms. Kwan failed to appear. (*Id.* at 6.) Allstate also asks the court to issue bench warrants
15 for both Mr. Choi and Ms. Kwan. (*Id.*) Allstate personally served this motion on Mr.
16 Choi and Ms. Kwan at the address for their clinic, which is the only address that they
17 have provided to the court. (*See* Supp. Mem. (Dkt. # 82) at 3; Leid Decl. ¶¶ 9-10, Exs. G,
18 H.) On March 6, 2017, Allstate filed a motion for a preliminary injunction seeking an

20 ² The only difference between the two addresses is that the suite number for Green Day is
21 listed as "#B-3" (2d Goltermann Decl. ¶ 7, Ex. F at 2-3) and the suite number for the Health
Clinic and Third-Party Defendants is listed as "B" on the court's docket (*see* Dkt.).

22 ³ At the court's May 18, 2017, civil contempt hearing, Ms. Kwan stated that she believed
that Mr. Choi was either presently in Korea or Vietnam, but she was not sure.

1 order from the court prohibiting Mr. Choi and Ms. Kwan, in either their personal
2 capacities or in their capacities as owners of Third-Party Defendants, from selling any
3 real property, personal property, or businesses. (*See* PI Mot.) Allstate also personally
4 served this motion on Mr. Choi, who accepted personal service for both himself and his
5 wife, Ms. Kwan. (Supp. Mem. at 3; Leid Decl. ¶ 11, Ex. I.)

6 On April 11, 2017, the court denied Allstate’s motion for a preliminary injunction⁴
7 and reserved ruling on Allstate’s motion for contempt pending a hearing on the contempt
8 motion and an opportunity for Mr. Choi and Ms. Kwan to be heard on the propriety of a
9 finding of civil contempt. (OSC (Dkt. # 72) at 7-11.) In the same ruling, the court issued
10 an order to show cause to Mr. Choi and Ms. Kwan, directing them to appear at a hearing
11 on May 1, 2017, at 3:00 p.m. to explain to the court why they did not comply with the
12 subpoenas that Allstate served upon them and did not attend their depositions. (*Id.* at 9.)
13 The court specifically warned Mr. Choi and Ms. Kwan that the court could find them in
14 contempt for failing to appear at the May 1, 2017, hearing. (*Id.* at 10.)

15 Mr. Choi and Ms. Kwan are *pro se* parties to this litigation⁵ and receive notice of
16 the court’s orders through the United States Postal Service.⁶ (*See, e.g.,* Dkt. ## 72
17

18 ⁴ The court denied Allstate’s motion for an injunction without prejudice to refile the
19 motion if appropriate at a later date. (OSC (Dkt. # 72) at 2, 10-12.)

20 ⁵ Ms. Kwan’s and Mr. Choi’s counsel moved to withdraw from their representation on
21 July 1, 2015 (MTW (Dkt. # 22)), and the court granted the motion to withdraw on August 5,
2015 (Min. Entry (Dkt. # 29)). Since that time, Ms. Kwan and Mr. Choi have been *pro se*
22 parties. (*See generally* Dkt.)

⁶ Despite their *pro se* status, Mr. Choi and Ms. Kwan are responsible for providing the
court with “notice of any change in address, telephone number, or e-mail address.” Local Rules

1 (indicating that a copy of the order was sent to “pro se parties via USPS”), 76 (same).)
2 Nevertheless, in recognition of Mr. Choi’s and Ms. Kwan’s *pro se* status and to ensure
3 that they received notice of the contempt hearing, the court also required Allstate to serve
4 Mr. Choi and Ms. Kwan with copies of the court’s order. (OSC at 9.) Allstate
5 successfully completed service of the court’s order on Mr. Choi at his clinic (Choi Aff. of
6 Serv. (Dkt. # 73)), and Allstate also left copies of the court’s order for Ms. Kwan with
7 Mr. Choi, who is her husband (Kwan Aff. of Serv. (Dkt. # 74)).

8 On April 25, 2017, the court issued an order rescheduling the May 1, 2017, show
9 cause hearing to May 18, 2017, due to circumstances outside of the court’s control.
10 (4/25/17 Order (Dkt. # 76) at 2.) The court again ordered Allstate to serve a copy of the
11 court’s order upon Mr. Choi and Ms. Kwan. (*Id.*) The court also expressly ordered Ms.
12 Kwan and Mr. Choi to “appear at the May 18, 2017, hearing and show cause why the
13 court should not . . . hold them in civil contempt for failing to comply with the subpoenas
14 that Allstate served upon them and for failing to attend their October 3, 2016,
15 depositions.” (*Id.* at 3 (citing OSC at 7-10).) Allstate could not complete personal
16 service of the court’s April 25, 2017, order on Ms. Kwan or Mr. Choi. (*See* Kohenberger
17 Aff. (Dkt. # 77).) However, Allstate’s process server spoke with the receptionist at Mr.
18 Choi’s and Ms. Kwan’s clinic, which is located at the only address that they have
19 supplied to the court. (*Id.*) The receptionist at the clinic told Allstate’s process server
20 that Mr. Choi had moved outside of the United States and “is not coming back.” (*Id.*)

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22 W.D. Wash. LCR 10(f). The address they provided to the court is the same address as the Health Center. (*See* Dkt.)

1 On May 1, 2017, Allstate’s process server left copies of the order at Mr. Choi and Ms.
2 Kwan’s clinic with the receptionist. (Sisk Aff. (Dkt. # 78).)

3 On May 10, 2017, Ms. Kwan telephoned Allstate’s counsel. (Leid Decl. ¶ 12.)
4 Allstate’s counsel told Ms. Kwan that her attendance at the May 18, 2017, hearing was
5 mandatory. (*Id.*) She stated that she was aware of the hearing; however, she did not
6 know if she would appear. (*Id.*)

7 **III. ANALYSIS**

8 **A. Allstate’s Motion for Contempt**

9 Federal Rule of Civil Procedure 69(a)(2) provides in pertinent part:

10 In aid of the judgment or execution, the judgment creditor . . . may obtain
11 discovery from any person—including the judgment debtor—as provided in
these rules or by the procedure of the state where the court is located.

12 Fed. R. Civ. P. 69(a)(2). Rule 69 “is designed to ‘allow the judgment creditor to identify
13 assets from which the judgment may be satisfied.’” *NML Capital, Ltd. v. Republic of*
14 *Argentina*, No. 2:14-cv-492-RFB-VCF, 2014 WL 3898021, at *3 (D. Nev. Aug. 11,
15 2014) (quoting 13 James W. Moore, et al., *Moore’s Federal Practice: Practice–Civil*
16 § 69.04 (2008)). Under Washington State law, a judgment creditor may require “the
17 judgment debtor to appear at a specified time and place . . . to answer concerning the
18 [judgment].” RCW 6.32.010. “The purpose of such proceedings is to make the judgment
19 debtor answer concerning the extent and whereabouts of his or her property and, if
20 possible, to enable the judgment creditor to locate nonexempt property belonging to the
21 judgment debtor which may be applied to the debt.” *Rainier Nat’l Bank v. McCracken*,
22 615 P.2d 469, 477 (Wash. Ct. App. 1980). Allstate followed the foregoing procedures

1 under Rule 69(a)(2) and RCW 6.32.010 when it sent subpoenas to Mr. Choi and Ms.
2 Kwan directing them to appear at depositions so that Allstate could inquire into the
3 location of Mr. Choi's and Ms. Kwan's assets from which Allstate could satisfy its
4 judgment. (*See* Goltermann Decl. ¶¶ 3-4, Exs. B, C.)

5 A court may employ civil contempt sanctions to enforce compliance with a court
6 order. *See United States v. United Mine Workers*, 330 U.S. 258, 303-04 (1947). A court
7 should not impose civil contempt sanctions, however, without providing the alleged
8 contemnor with notice and an opportunity to be heard on the propriety of a contempt
9 order. *See U.S. S.E.C. v. Hyatt*, 621 F.3d 687, 694 (7th Cir. 2010). The party alleging
10 civil contempt bears the burden to prove by clear and convincing evidence that the
11 alleged contemnor violated a specific and definite court order by failing to take all
12 reasonable steps within its power to comply. *See Go-Video, Inc. v. Motion Picture Ass'n*
13 *of Am. (In re Dual-Deck Video Cassette Recorder Antitrust Litig.)*, 10 F.3d 693, 695 (9th
14 Cir. 1993); *Distribs. Ass'n Warehousemen's Pension Tr. Fund v. Foreign Trade Zone 3,*
15 *Inc.*, No. C 05-1161 SBA, 2009 WL 975786, at *1 (N.D. Cal. Apr. 9, 2009). Once that
16 party has met its burden, the burden shifts to the alleged contemnor to show that it has
17 substantially complied with the court order, is unable to comply, or has based its
18 noncompliance on a good faith and reasonable interpretation of the court's order. *See*
19 *Reno Air Racing Ass'n, Inc. v. McCord*, 452 F.3d 1126, 1130 (9th Cir. 2006); *Dual-Deck,*
20 10 F.3d at 695; *Warehousemen's*, 2009 WL 975786, at *1. A subpoena issued by an
21 attorney constitutes a court order, disobedience of which may warrant contempt

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1 sanctions. *See Pennwalt Corp. v. Durand-Wayland, Inc.*, 708 F.2d 492, 494 n.5 (9th Cir.
2 1983); Fed. R. Civ. P. 45.

3 As an initial matter, the court finds that both Mr. Choi and Ms. Kwan were
4 provided adequate notice of the show cause hearing. Both received notice of the court's
5 initial April 11, 2017, order to show cause because Clerk's office personnel mailed a
6 copy of the order to Mr. Choi and Ms. Kwan at the address they provided to the court.
7 (*See* Dkt. # 72 (indicating that a copy of the order was sent to the *pro se* parties via
8 USPS)); *see Popa v. Holder*, 571 F.3d 890, 897-98 (9th Cir. 2009) (holding in the context
9 of removal proceedings that "[t]he government satisfies notice requirements 'by mailing
10 notice of the hearing to . . . the address last provided.'" (citation omitted)). In addition,
11 Allstate personally served this order on both Mr. Choi and Ms. Kwan. (Choi Aff. of
12 Serv.; Kwan Aff. of Serv.) Although Allstate was unable to personally serve Mr. Choi
13 and Ms. Kwan with the court's April 25, 2017, order, which rescheduled the hearing to
14 May 18, 2017, the court finds that Mr. Choi and Ms. Kwan received sufficient notice of
15 this order as well. Like the court's April 11, 2017, order, personnel in the Clerk's office
16 mailed the court's April 25, 2017, order to both Mr. Choi and Ms. Kwan at the last
17 known address that Mr. Choi and Ms. Kwan provided to the court. (*See* Dkt. # 76
18 (indicating that a copy of the order was sent to the *pro se* parties via USPS)); *see also*
19 Local Rules W.D. Wash. LCR 10(f) (placing the responsibility on *pro se* parties for
20 notifying the court of any change in their address, telephone number, or email address).
21 In addition, Ms. Choi admitted to Allstate's counsel that she had received notice of the
22 show cause hearing. (Leid Decl. ¶ 12.)

1 Mr. Choi failed to appear at the court's show cause hearing on May 18, 2017.
2 Accordingly, he provided no explanation for his failure to adhere to the subpoena Allstate
3 served upon him or for his failure to appear at his deposition. Based on the foregoing
4 authorities and Allstate's submissions to the court, the court finds that Allstate has met its
5 burden of demonstrating by clear and convincing evidence that Mr. Choi's conduct in
6 failing to comply with the subpoenas and to appear at his deposition constitutes civil
7 contempt. (*See* Contempt Mot.; Goltermann Decl. ¶¶ 5-6, Exs. D, E.); *Dual-Deck*, 10
8 F.3d at 695; *Pennwalt*, 708 F.2d at 494 n.5.

9 In addition, Mr. Choi's failure to appear at the May 18, 2017, show cause hearing
10 violates the court's April 21, 2017, and April 25, 2017, orders. (*See* OSC at 9-10;
11 4/25/17 Order at 2-3.) The court warned Mr. Choi that the court could also find him in
12 contempt if he defied the court's order to attend the show cause hearing. (OSC at 10.)
13 Accordingly, the court finds that Mr. Choi's violation of the court's April 11, 2017, and
14 April 25, 2017, orders is an independent ground upon which to find Mr. Choi in civil
15 contempt.

16 Ms. Kwan appeared *pro se* at the May 18, 2017, contempt hearing. During the
17 course of the hearing, Ms. Kwan agreed to appear for her supplemental proceedings
18 deposition at 10:00 a.m. on May 19, 2017. Accordingly, the court declines to find Ms.
19 Kwan in civil contempt of court. The court, however, warned Ms. Kwan that if she fails
20 without justification to appear for her May 19, 2017, supplemental proceedings
21 deposition, the court would find her in civil contempt and issue a bench warrant for her
22 arrest.

1 In light of these contempt findings, Allstate asks the court for two remedies: (1)
2 an award the reasonable attorney's fees and costs Allstate incurred in bringing the motion
3 for contempt and for appearing at the October 3, 2017, depositions, and (2) the issuance
4 of a bench warrant for Mr. Choi. (Contempt Mot. at 4.) The court awards Allstate its
5 reasonable attorney's fees and costs as requested. The court orders Allstate to submit a
6 separate motion within 14 days of the date of this order that provides the court with an
7 accounting of those fees and costs so that the court may assess their reasonableness under
8 the *Kerr* factors.⁷ Once the court determines the amount of Allstate's reasonable fees and
9 costs, the court will add this amount to the judgment in this case. The court also grants
10 Allstate's request for the issuance of a bench warrant for Mr. Choi's arrest.⁸

11 IV. CONCLUSION

12 For the reasons set forth in this order, the court FINDS Mr. Choi to be in civil
13 contempt of this court.

14 The court AWARDS Allstate its reasonable attorney's fees and costs for
15 appearing at the depositions of Ms. Choi and Mr. Kwan and for bringing Allstate's
16 motion for contempt. The court ORDERS Allstate to submit a motion within 14 days of
17 the date of this order with an accounting of those fees and costs so that the court may
18 assess their reasonableness and award a specific amount.

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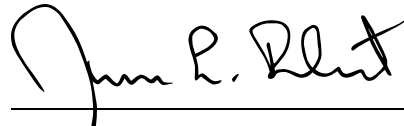
21 ⁷ See *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

22 ⁸ The court's power of civil contempt includes the power to issue a bench warrant for a
contemnor's arrest. See *Perry v. O'Donnell*, 795 F.2d 702, 706 (9th Cir. 1985).

1 Further, the court ISSUES a bench warrant for the arrest of Mr. Choi to compel his
2 appearance before this court and his compliance with the deposition subpoena Allstate
3 served on him. Following his arrest, Mr. Choi is to be brought immediately before this
4 court to address the court's order to show cause and Allstate's contempt motion. If the
5 court is not immediately available to conduct a civil contempt hearing following Mr.
6 Choi's arrest, Mr. Choi shall be incarcerated until such time as the court can conduct a
7 civil contempt hearing.

8 Finally, the court ORDERS Ms. Kwan to appear for her supplemental proceedings
9 deposition with Allstate on May 19, 2017, at 10:00 a.m. The court warns Ms. Kwan that
10 if she fails to appear for her deposition, the court may find her in civil contempt of court
11 and issue a bench warrant for her arrest.

12 Dated this 19th day of May, 2017.

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15 JAMES L. ROBART
16 United States District Judge
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